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TO:

FAX NUMBER:

PHONE NUMBER:

United States Patent and Trademark Office Examiner: I. Yucil

703-872-9306

571-272-3282

Art Unit: 1636

SENDER:

Ann S. Hobbs, Ph.D.

SENDER'S FAX NUMBER:

SENDER'S PHONE NUMBER:

202-344-8300

202-344-4651

SENDER'S ASSISTANT: Carol Cascio ASSISTANT'S PHONE NUMBER:

202-344-4738

DATE:

May 23, 2005

CLIENT/MATTER NUMBER:

38644-175286

PAGES, EXCLUDING COVER:

17

MESSAGE:

Re: U.S. Application No. 08/711,961

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The following are attached:

- Urgent Request for Status;
- b. Request for Continued Examination Under CFR 1.114 dated April 27, 2004;
- c. Petition to Withdraw Erroneous Notice of Abandonment;
- d. Copy of January 22, 2004 Request for Reconsideration with date stamped receipt;
- e. Copy of March 1, 2004 Denial of Request.

Certificate of Transmission under 37 CFR 1.8 is attached.

Revised PTO/SB/97 (08-00)

If you require assistance with this transmission, please contact the sender.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. postal service. Thank you.

Certificate of Transmission under 37 CFR 1.8

I hereby certify that the attached is being facsimile transmitted to the Patent and Trademark Office for Application No. 08/711.961.

on May 23, 2005. Date

- Urgent Request for Status;
- Request for Continued Examination Under CFR 1.114 b. dated April 27, 2004;
- Petition to Withdraw Erroneous Notice of C. Abandonment:
- Copy of January 22, 2004 Request for d. Reconsideration with date stamped receipt;
 - Copy of March 1, 2004 Denial of Request. e.

C. s. Horn

Ann S. Hobbs, Ph.D. (Reg. No. 36,830) Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Burden Hour Statement: This form is estimated to take 0.03 hours to complete. Time will vary depending upon the needs of the Individual case. Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231, DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

MAY 2 3 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Appeal No. 2001-1881

BRANSTROM et al.

Art Unit: 1636

Appl. No. 08/711,961

Examiner: I. Yucel

Filed: September 6, 1996

Atty. Docket No. 38644-175286

For: BACTERIAL DELIVERY SYSTEM

Customer No.

26694

PATENT TRADEMARK OFFICE

URGENT REQUEST FOR STATUS

U.S. Patent and Trademark Office 2011 South Clark Place Customer Window Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Sir:

This is a request for the status of the above-referenced application, and a response to the Petition filed on April 27, 2004. A copy of the filed papers is attached, including copies of the PTO date stamped receipt on April 27, 2004; the Request for Continued Examination under 37 CFR 1.114; Petition to withdraw Erroneous Notice of Abandonment; the January 22, 2004 Request for Reconsideration with date stamped receipt; and the March 1, 2004 Denial of Request.

The undersigned has made several telephone calls to the Office without result.

The Petitions Branch informed the undersigned that this was the Examiner's responsibility. The Examiner believes it is the responsibility of the Petitions Branch.

Serial No. 08/711,961

An early response to this paper is respectfully requested.

Respectfully submitted,

Ann S. Hobbs, Ph.D. Registration No. 36,830

VENABLE P.O. Box 34385

Washington, D.C. 20043-9998 Telephone: (202) 962-4800 Telefax: (202) 962-8300

ASH/cc Enclosures

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| Atty. Docket No: | 38644- 175286 | | | |
| Re: | Branstrom et al. | | | |
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| Trademark: | | | Trademark Reg. No: | |
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| No: | <u> </u> | | | |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Appeal No. 2001-1881

BRANSTROM et al.

Art Unit: 1636

Appl. No. 08/711,961

Examiner: I. Yucel

Filed: September 6, 1996

Atty. Docket No. 38644-175286

For: BACTERIAL DELIVERY SYSTEM

Customer No.

26694

PATENT TRADEMARK OFFICE

REQUEST FOR RECONSIDERATION

U.S. Patent and Trademark Office
Mail Stop: U.S. Board of Patent Appeals and Interferences
2011 South Clark Place
Customer Window
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Sir:

Applicants request reconsideration of the Decision on Appeal issued December 22, 2003, affirming the obviousness-type double patenting rejection over prior U.S. Patent No. 5,824,538. A Terminal Disclaimer was filed in the application on October 17, 2003, a copy of which is attached hereto. It is respectfully submitted that the Terminal Disclaimer overcomes the obviousness-type double patenting rejection. Accordingly, it is requested that the Board reverse the double patenting rejection and allow the patent to issue..

Serial No. 08/711,961

It is believed that no fees are required. However, if the Patent Office deems that any fees are necessary, authorization is hereby granted to charge any required fees

Deposit Account No. 22-0261

Respectfully submitted,

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Ann S. Hobbs, Ph.D. Registration No. 36,830

VENABLE P.O. Box 34385 Washington, D.C. 20043-9998 Telephone: (202) 344-4800 Telefax: (202) 344-8300

ASH/cc

| Petition/Request for Exertsion of Time (two file. ext.) Notice of Appeal Appeal Brief (In triplicate) Request for Oral Hearing Reply Brief (In triplicate) Request for Oral Hearing Confirmation of Hearing Petition Issue Fee Transmittal and publication fee Certificate of Correction Maintenance Fee Transmittal Power of Attorney B Affidavit Fee Response to Notice to File Missing Parts Response to Notice to File Missing Requirements 8 and 15 Affidavit Response to Restriction Requirement Petition to Revive Sequence Listing - CDR Enclosed? Yes No | | | į | | · F |
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| Arty, Decken No: 3864-17:228 Ro: Branstrom et al. Filling Date: September 6, 1966 Application No: G2711.991 Issue Date: Trademark Coffice: Trademark: Trademark Reg. No: Trademark: Trademark Reg. No: Trademark Coffice: | | THE Official Carette Date: | | | - / |
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RECEIVED CENTRAL FAX CENTER

MAY 2 3 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

BRANSTROM et al.

Appl. No. 08/711,961

Filed: September 6, 1996

For: BACTERIAL DELIVERY SYSTEM

Art Unit: 1636

Examiner: I. Yucel

Atty. Docket No. 38644-175286

Customer No.

26694^{}

SUBMISSION OF TERMINAL DISCLAIMER

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Sir:

Enclosed is a Terminal Disclaimer for the above-identified patent application.

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Respectfully submitted,

Ann S. Hobbs, Ph.D.

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PTO/SB/26 (10-00)

Applied for use through 10/31/2002. OMB 0651-0031

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38644-175286

In re Application of: Arthur A. Bransfrom et al.

Application No. 08/711,961

Filed: September 6, 1996

FOR BACTERIAL DELIVERY SYSTEM

The owner Government of the United States, as represented by the Secretary of the Army of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 5.824.538. The owner hereby agrees that any patent so granted on the Instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the Instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for fallure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutoffly disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims cancelled by a reexamination certificate, is relassued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

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| | | _ | DATE MAILED: 03/01/2004 | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

The opinion in support of the decision being entered today was <u>not</u> written for publication and is <u>not</u> binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ARTHUR A. BRANSTROM, DONATA R. SIZEMORE, and JERALD C. SADOFF

Appeal No. 2001-1881 Application No. 08/711,961 MAILED

FEB 2 7 2004

U.S. PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

ON BRIEF

Before WINTERS, ADAMS, and GREEN, <u>Administrative Patent Judges</u>.

GREEN, <u>Administrative Patent Judge</u>.

REQUEST FOR REHEARING

On December 22, 2003, this panel issued a decision on appeal in which we summarily affirmed the obviousness-type double patenting. In that decision, we noted:

Even though we now have new claims 56, 57, 59-62 and 64-65 before us, appellants do not dispute that the new claims are subject to the obviousness-type double patenting rejection affirmed in the May Decision on Appeal. Appellants' only remarks were that they would file a Terminal Disclaimer, which has not been filed at this time. See Paper No. 29. Under these facts, we summarily affirm the obviousness-type double patenting rejection as to newly entered claims 56, 57, 59-62 and 64-65.

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Decision on Appeal mailed December 22, 2003, page 2.

In the Request for Reconsideration, Appellants request reconsideration of the above decision on the grounds that a terminal disclaimer was filed in the application on October 17, 2003. Appellants have also attached a copy of the Terminal Disclaimer to the Request for Reconsideration. The function of the Board in the <u>ex parte</u> context, however, is to review rejections. The Board does not perform examining functions in the first instance, and a terminal disclaimer must be proffered to the relevant Technology Center and the examiner, rather than to the Board. <u>See MPEP § 1490</u>.

Moreover, an obviousness-type double patenting rejection of claim 45-55 was before us in the Decision on Appeal mailed May 30, 2003, and as appellants had not argued the merits of the rejection, and as a terminal disclaimer had not been filed, that rejection was also affirmed. The Request for Reconsideration does not provide an explanation as to why the terminal disclaimer filed October 17, 2003, after our first decision on appeal, was timely filed. Accordingly, appellants request for rehearing is denied.

^{&#}x27;See In re Deters, 515 F.2d 1152, 1157, 185 USPQ 644, 48 (CCPA 1975) ("Since no terminal disclaimer was timely filed, we sustain... [the obviousness-type double patenting] rejection."); Cf. In re Jursich, 410 F.2d 803, 807, 161 USPQ 675 (CCPA 1969), footnotes and citations omitted, ("The record shows that appellants' assignee filed a terminal disclaimer in the Patent Office after the board decision which the board refused to consider because it was not timely presented or considered by the examiner. Appellants assign error in that action by the board, arguing that the terminal disclaimer 'eliminated the double patenting issue in the present case.' However accurate that statement may be, we cannot consider the disclaimer here....").

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CONCLUSION

For the reasons set forth above, Appellant's Request for Rehearing is denied.

REQUEST FOR REHEARING-DENIED

Sherman D. Winters

Administrative Patent Judge

Donald E. Adams

Administrative Patent Judge

APPEALS AND

BOARD OF PATENT

INTERFERENCES

Lora M. Green

Administrative Patent Judge

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MCMR-JA John Moran US Army Medical Research And Material Command Fort Detrick Frederick, Maryland 21702-5012

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